

Message Text

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ACTION DLOS-09

INFO OCT-01 IO-13 ISO-00 OIC-02 AF-10 ARA-10 EA-07

EUR-12 NEA-10 ACDA-07 AGRE-00 AID-05 CEA-01

CEQ-01 CG-00 CIAE-00 EPG-02 COME-00 DODE-00

DOTE-00 EB-07 EPA-01 ERDA-05 FEAE-00 FMC-01

TRSE-00 H-01 INR-07 INT-05 JUSE-00 L-03 NSAE-00

NSC-05 NSF-01 OES-07 OMB-01 PA-01 PM-04 PRS-01

SP-02 SS-15 USIA-06 /163 W

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TO SECSTATE WASHDC 4273

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FROM: LOS DEL

E.O. 11652: N/A

TAGS: PLOS

SUBJECT: INFORMAL PLENARY OF 27 JUNE 1977 ON PART IV (COMPULSORY
DISPUTE SETTLEMENT), ARTICLE 18 (OPTIONAL EXCEPTIONS)
AND 17 (LIMITATIONS ON JURISDICTION)

1. SUMMARY: THE DEBATE ON ARTICLE 18 (OPTIONAL EXCEPTIONS)
CONCLUDED AND THAT ON ARTICLE 17 (LIMITATIONS ON JURISDICTION)
COMMENCED. PROVIOUS ARGUMENT PRO AND CON WERE REPEATED WITH
RESPECT TO ARTICLE 18, WITH THE DEBATE FOCUSING ON 18(1)(A)
(BOUNDARY DELIMITATIONS). THE USSR, IN A STRONG INTERVENTION,
OMINOUSLY STATED THAT WERE (1)(A) NOT AMENDED SO AS TO MAKE
THE RESIDUAL FORUM IN THE PROVISIO CLAUSE OPTIONAL IN LIEU OF
OBLIGATORY, IT COULD WELL BE FORCED TO REFUSE TO ACCEPT
COMPULSORY ADJUDICATION FOR THE TREATY AS A WHOLE. THE
USSR REFERRED TO THEOPTIONAL PROTOCOL UNDER THE 1958 CON-
VENTION, APROTOCOL WHICH THE USSR HAD NOT SIGNED, WHICH
COULD WELL BE THE RESULT OF INSISTENCE ON COMPULSORY SETTLE-
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MENT IN (1)(A).

2. THE CHAIRMAN (AMERASINGHE) INTRODUCED THE DEBATE ON
ARTICLE 17, INVITING PARTICULAR ATTENTION OF THE DELE-
GATES TO THE LAST CLAUSE OF THE CHAPEAU OF 17(1), AND
TO THE WORLD "MANIFEST" AND PROVISIO IN 17(1)(D). MEXICO,
IN INFORMAL PLENARY OF 24 JUNE, GAVE THE GROUP OF 77'S

POSITION, OPPOSING COMPLUSORY ADJUSTICATION FOR ANY DIS-
PUTES ARISING OUT OF ACTIVITIES IN THE ECONOMIC ZONE,
AND ASKING FOR THE DELETION OF 17(1)(D) (THE FISHERIES
EXCEPTION). THIS WAS SUPPORTED AND ELABORATED UPON BY
CHILE, WHICH STATED THAT ARTICLE 17 NOW REPRESENTED
THE MINORITY VIEWPOINT. SINGAPORE, REPRESENTING THE
LANDLOCKED AND GEOGRAPHICALLY DISADVANTAGED STATE GROUP,
STRESSED THE OPPOSITE VIEWPOINT, AND, AFTER AN ANALYSIS
OF THE ISSUES INVOLVED, PROPOSED A NEW PARAGRAPH IN
LIEU OF (1)(D) WHICH DELETED THE PROVISIO CLAUSE RELATING
TO THE SOVEREIGN RIGHTS OF THE COASTAL STATE. THE GDR
PROPOSED THE DELETION OF SCIENTIFIC RESEARCH IN 17(1)
(C). END SUMMARY.

3. SPEAKERS INCLUDED PAKISTAN, URUGUAY, ARGENTINA,
IRAN, BURMA, THE UAE, BENEZUELA, TRINIDAD AND TOBEGO,
THE USSR, TURKEY, JAPAN, THE FRG, SINGAPORE, CHILE,
POLAND AND THE GDR.

4. ARTICLE 18(1)(A) - PAKISTAN, URUGUAY, THE UAE,
VENEZUELA AND TURKEY SUPPORTED THE DELETION OF 18(1)(A)
(BOUNDARY DELIMITATION). ARGENTINA OBJECTED TO THE
CHAIRMAN'S AMENDMENT OF 24 JUNE 1977 EXLUCING THE
DETERMINATION OF ANY CLAIM TO SOVEREIGNTY OR RIGHTS
WITH RESPECT TO CONTINENTAL OR INSULAR LAND TERRITORY,
AND EXPRESSED PREFERENCE FOR THE CHAIRMAN'S AMENDMENT
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TO (1)(A) OF 22 JUNE 1977. THE CHAIRMAN ACCNOTT ACKNOWLEDGE
THE DIFFERENCE BETWEEN THE TWO FORMULAS, STATING THAT
THE 24 JUNE AMENDMENT ONLY PURPORTED TO BE A DRAFTING
CHANCE. ARGENTINA REPEATED HER SUPPORT FOR THE USSR'S
AMENDMENTS TO THE CHAPEAU OF 18(1) AND TO (1)(A).

5. THE USSR REPRESENTATIVE MADE HIS STRONGEST INTER-
VENTION TO DATE AGAINST THE RETENTION OF (1)(A). HE
CONTENDED THAT MAKING BOUNDARY DISPUTES SUBJECT TO
COMPLUSORY ADJUDICATION WAS CONTRARY TO THE SOVEREIGNTY
AND DIGNITY OF STATES; IT WAS ALSO CONTRARY TO THE
FUNDAMENTAL SOVIET POSITION DURING THE LAST 60 YEARS
ON COMPULSORY PROCEDURES, A POSITION UNLIKELY TO CHANGE
IN THE 61ST YEAR. IF SUCH AN OBLIGATION WERE INCORP-
ORATED IN 18(1)(A), THE USSR WOULD BE FORCED TO OBJECT
TO PART IV AS A WHOLE AND TO THE INCLUSION OF ANY
COMPULSORY DISPUTE SETTLEMENT PROCEDURES IN THE CON-
VENTION. ADHERENCE TO THE PRESIDENT'S AMENDMENT COULD
WELL RESULT IN THE COMPULSORY DISPUTE SETTLEMENT MA-
CHINERY BEING INCLUDED IN AN OPTIONAL PROTOCOL SUCH AS
THAT OF 1958, WHICH THE USSR WOULD NOT SIGN. HE STATED THAT
USSR'S PREFERENCE FOR THE PROCEDURE AS PROVIDED IN

ARTICLE 33 OF THE UN CHARTER AND THE OPTIONAL PROTOCOL
APPROACH UNDER ARTICLE 36 OF THE STATUTE OF THE ICJ.
IN CONCLUSION, HE POINTED OUT THE INEQUITY OF THE PRO-
VISO CLAUSE OF (1)(A), WHEREBY THE SEONND PARTY HAD NO
CHOICE AS TO FORUM, WHICH WAS DICTATED TO IT. HE COULD,
HOWEVER, ACCEPT THE AMENDMENT OF THE PRESIDENT RELATING
TO MIXED LAND/SEA DISPUTES. THE JAPANESE REPRESENTATIVE
STATED THAT THE AMENDMENT OF THE PRESIDENT TO (1)(A) WAS
ACCEPTABLE, BUT CONSIDERED THE PROVISO CLAUSE TOO WIDE,
AND WISHED TO ADD THERETO "UPON THE REQUEST OF A PARTY
TO THE DISPUTE."

6. ARTICLE 18(1)(B) - URUGUAY, IRAN AND THE UAE SUPPORT-
ED THE DELETION OF (1)(B) (THE MILITARY EXCEPTION).
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JAPAN STATED THAT THE MILITARY EXCEPTION MAY NOT BE
NECESSARY; THAT THE TREATMENT OF LAW ENFORCEMENT ACTIVI-
TIES WAS INADVISABLE; AND THAT THE SECOND PART OF THE
SECOND AMENDMENT OF THE PRESIDENT TO (1)(A), THE LAND/
SEA AMENDMENT, SHOULD BE DELETED.

7. ARTICLE 18(1)(C) - URUGUAY, IRAN AND THE UAE OPPOSED
(1)(C), AS THEY BELIEVED THAT ARTICLE 103 OF THE UN
CHARTER AUTOMATICALLY PREVAILED. VENEZUELA, HOWEVER,
SUPPORTED THE AMENDMENT OF THE CHAIRMAN TO (1)(C), AS
PREFERABLE TO REV.2. JAPAN FAVORED THE RSNT VERSION.

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FROM: LOS DEL

8. ARTICLE 17 - IN HIS OPENING REMARKS ON ARTICLE 17 (EXCEPTIONS TO JURISDICTION), THE CHAIRMAN INDICATED THE RELATIONSHIP OF THE CLAUSE "AND OTHER INTERNATIONALLY LAWFUL USES OF THE SEA RELATED TO NAVIGATION OR COMMUNICATION" IN 17(1)(A) TO ARTICLE 46(1) OF PART II, AND THE PROPRIETY OF NOT AMENDING IT PENDING ITS SUBSTANTIVE RESOLUTION IN COMMITTEE II. HE STATED THAT (1)(B) SHOULD BE VIEWED AS A COUNTERBALANCE TO (1)(A), BUT NOTED THAT SEVERAL DELEGATIONS BELIEVED THAT IT SHOULD BE EXCLUDED FROM ARTICLE 17. AS FAR AS (1)(D) WAS CONCERNED, THE ADJECTIVE "MANIFESTLY" AND THE PROVISOR "PROVIDED THAT IN NO CASE SHALL THE SOVEREIGN RIGHTS OF THE COASTAL STATE BE CALLED IN QUESTION" WERE IN RESPONSE TO THE NEED OF COASTAL STATES TO AVOID CAPTIOUS SUITS. THE ISSUE TO BE RESOLVED WAS WHAT CHANGES WERE NEEDED TO MAKE THIS ARTICLE MORE ACCEPTABLE.

9. MEXICO, IN PRESENTING THE POSITION OF THE COASTAL
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STATES' GROUP, OPPOSED ANY COMPULSORY ADJUDICATION OF DISPUTES ARISING OUT OF ACTIVITIES IN THE EXCLUSIVE ECONOMIC ZONE. IN PARTICULAR, THIS GROUP INSISTED ON THE DELETION OF 17(1)(D) (FISHERIES EXCEPTION) CHILE, CONFINING ITS REMARKS TO (1)(D) AND ASSOCIATING ITSELF WITH THE POSITION OF MEXICO, STATED: THAT (1)(D) OF REV.2 WAS CONTRARY TO THE VIEWS EXPRESSED BY THE GROUP WITH RESPECT TO THE TWO EARLIER FORMULATIONS; THAT THE GREAT MAJORITY OF THE GROUP OF 77 WAS SOLIDLY OPPOSED TO ITS INCLUSION; AND THAT THE TEXT IN REV.2 REPRESENTED THE MINORITY VIEWPOINT. THE CHILEAN REPRESENTATIVE STATED THAT THE ZONE'S EXISTENCE WAS INDEPENDENT OF THE CONVENTION, AND THAT ANY DISPUTES RELATING TO THE DUTIES OF THE COASTAL STATE WERE TO BE SETTLED IN ACCORDANCE WITH ARTICLE 33 OF THE UN CHARTER. HE POINTED OUT THAT COMPULSORY JURISDICTION IN THE ZONE WAS PROPERLY LIMITED TO EXCLUSIVE RIGHTS OF THE COASTAL STATE IN THE ECONOMIC ZONE, BUT COULD NOT BE EXTENDED TO SOVEREIGN RIGHTS THEREIN NOR TO THE DISCRETION TO INTERPRET THE EXERCISE OF SUCH SOVEREIGN RIGHTS. HE NOTED THE MILITARY ACTIVITIES EXCEPTION UNDER ARTICLE 18(1)(B), AND EXPRESSED THE VIEW THAT THE EXCEPTION

WITH RESPECT TO FISHERIES SHOULD BE CONSIDERED OF EQUAL IMPORTANCE.

10. THE REPRESENTATIVE OF SINGAPORE, IN ENUNCIATING THE POSITION OF THE LL/GDS, STOOD FOR THE MINIMAL NUMBER OF EXCEPTIONS TO COMPULSORY ADJUDICATION. THE GROUP BELIEVED THAT ARTICLE 17 WAS TOO FAVORABLE TO THE COASTAL GROUP. COASTAL STATES' RIGHTS ENUMERATED IN THE CHAPEAU OF 17 WERE RELATED TO PROVISIONS IN PART II CONCERNING SOVEREIGN RIGHTS, EXCLUSIVE JURISDICTION AND EXCLUSIVE RIGHTS, ESPECIALLY TO ARTICLES LIMITED OFFICIAL USE

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44 AND 65. THE SCOPE OF ARTICLE 17 WAS TOO BROAD, ALTHOUGH THE MARINE ENVIRONMENT EXCEPTION THERETO IN ARTICLE 17(1)(C) WAS ACCEPTABLE, AND INCLUSION OF SCIENTIFIC RESEARCH IN ARTICLE 17(1)(C) WAS ENCOURAGING. #E PROPOSED THAT ARTICLE 17(1)(D) BE DELETED AND REPLACED BY THE FOLLOWING: "WHEN IT IS CLAIMED THAT A COASTAL STATE HAS FAILED TO PERFORM ITS DUTIES OR TO OBSERVE THE CONDITIONS FOR THE EXERCISE OF ITS RIGHTS IN RESPECT OF LIVING RESOURCES PROVIDED FOR IN THE PRESENT CONVENTION." HE ALSO PROPOSED DELETION OF THE PROVISIO CLAUSE RELATING TO SOVEREIGN RIGHTS, AS THERE WAS SUFFICIENT REFERENCE TO SUCH RIGHTS IN ARTICLE 44 OF PART II. HE FURTHER PROPOSED THAT ARTICLE 17 (1)(A) AND (B) BE AMENDED TO REPLACE "ACTED IN CONTRAVENTION OF THE PROVISIONS OF THE PRESENT CONVENTION" BY "FAILED TO RESPECT THE RIGHTS ESTABLISHED BY THE PRESENT CONVENTION IN FAVOR OF OTHER STATES."

11. THE POLISH REPRESENTATIVE PROPOSED THAT "MANIFESTLY" BE DELETED FROM (1)(D), AND WOULD NOT ACCEPT ARTICLE 17 WERE (1)(D) TO BE DELETED. ALTHOUGH HE DID NOT PRESUME TO QUESTION THE SOVEREIGN RIGHTS OF A COASTAL STATE, DISPUTES RELATED TO SUCH RIGHTS WERE PROPERLY SUBJECT TO SETTLEMENT. THE GDR REPRESENTATIVE PROPOSED THE DELETION OF SCIENTIFIC RESEARCH FROM (1)(C). HE SUPPORTED POLAND'S CHANGES TO (1)(D), AND SINGAPORE'S AMENDMENT TO (1)(A) AND (B).

12. THE PRESIDENT ADJOURNED THE INFORMAL PLENARY UNTIL TUESDAY, 28 JUNE WHEN THE DISCUSSION ON ARTICLE 17 WOULD BE RESUMED.

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Message Attributes

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